

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 30 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0150-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MONDRE KAMONIE BELLE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20010581

Honorable Richard E. Gordon, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Mondre K. Belle

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 After a jury trial, petitioner Mondre Belle was found guilty of second-degree burglary, kidnapping, sexual abuse, and four counts of sexual assault. He appealed and this court affirmed his convictions and, as modified by our decision, the

sentences imposed. *See State v. Belle*, No. 2 CA-CR 2002-0222 (memorandum decision filed Feb. 26, 2004). He then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The trial court denied relief and this court denied relief on review. *See State v. Belle*, No. 2 CA-CR 2008-0159-PR (memorandum decision filed Jan. 15, 2009). Belle now seeks review of the court’s denial of a successive petition for post-conviction relief, in which he raised claims of ineffective assistance of counsel and prosecutorial misconduct.

¶2 In a thorough, well-reasoned minute entry, the trial court clearly identified the claims Belle raised in this post-conviction proceeding and found the claims either were essentially the same as the claims Belle had raised in the first post-conviction proceeding or were claims he could have raised in that proceeding or on appeal. Therefore, the court found Rule 32.2 precluded Belle from raising such claims in this proceeding. The court rejected Belle’s attempts to avoid the preclusive effect of Rule 32.2 by characterizing the claims as cognizable under Rule 32.1(h) (actual innocence). Nevertheless, the court addressed the claims on their merits “[o]ut of an abundance of caution,” and found they were not colorable.

¶3 Although the trial court was not required to address the merits of Belle’s claims, correctly having found the claims precluded, it did not err when it concluded none of Belle’s claims was colorable. Because no purpose would be served by setting forth the court’s correct minute entry in its entirety, we adopt that ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when court correctly identifies and rules on issues raised “in a fashion that will allow any court in the future to understand

the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶4 Belle has the burden on review of establishing the trial court abused its discretion in denying post-conviction relief. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (appellate court will not disturb trial court’s ruling on petition for post-conviction absent abuse of discretion). He has not sustained that burden here. Therefore, although we grant Belle’s petition for review, we deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge